GOP Move Imperils Kleindienst

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Republicans yesterday won a battle to prevent White House aide Peter M. Flanigan from testifying before the Senate Judiciary Committee, but in the process may have put the nomination of Richard G. Kleindienst as Attorney Genral in jeopardy.

Senate Democratic Whip Robert C. Byrd of West Virginia joined Sen. Sam J. Ervin Jr. (D-N.C.) in a threat to block the Kleindienst nomination unless Flanigan testifies on his involvement in an antitrust settlement with the International Telephone and Telegraph Corp.

There were indications last night that other powerful figures in the Senate, including Sen. Russell B. Long (D-La.), may delay or oppose the Kleindienst nomination if the White House persists in invoking "executive privilege" on behalf of Flanigan.

John W. Dean III, counsel to the President, invoked the privilege in a letter released yesterday by Judiciary Committee Chairman James O. Eastland (D-Miss.).

"Under the doctrine of separation of powers, and long established historical precedents, the principle that members of the President's immediate staff not appear and testify before congressional committees with respect to the performance of their duties is firmly established," Dean said.

Dean, formerly an aide to Kleindienst at the Justice Department, insisted that Flanigan's role in the ITT settlement had been limited to soliciting a report by New York invesment banker Richard J. Ramsden, evaluating ITT's statement of "financial hardship."

The hearngs on the Kleindienst nomination were reopened early last month after columnst Jack Anderson published a memorandum, allegedly written by ITT Lobbyist Dita D. Beard, linking the antitrust settlement to the company's pledge of at least $200,000 to help bring the Republican Natonal Convention to San Diego. Kleindienst, who was deputy attorney general at the time, was in charge of the ITT case.

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In an executive session of the Judiciary Committee yesterday morning, Ervin introduced a motion to subpoena Flanigan, White House aide William Timmons and "any other White House or Justice Department employee mentioned in these hearings."

In a 6-to-6 tie vote along strict party lines, with Chairman Eastland Abstaining, Ervin's motion failed.

The same vote defeated subsequent motions by Ervin to subpoena only Flanigan and Timmons and by Sen. Quentin N. Burdick (D-N.D.) to subpoena only Flaingan.

Byrd then offered a compromise motion to invite Flanigan to testify in a private, rather than a public session of the committee, but that was defeated on a 9-to-4 vote.

Eastland voted for that motion, along with Byrd and Sens. Marlow W. Cook (R-Ky.) and John V. Tunney (D-Calif.).

Former Assistant Attorney General Richard W. McLaren has testified that he turned to Flanigan to find Ramsden only because Ramsden, as a White House fellow, had previously prepared a similar report on another antitrust case.

"After reviewing the transcripts of your hearings to date with Mr. Flanigan," Dean wrote Eastland this week, "I can and do certify to you and your committee that Mr. Flanigan's involvement in this matter was as stated by Judge McLaren in his sworn testimony."

McLaren is now a U.S. district judge in Chicago.

"I might also add that Mr. Flanigan did not directly or indirectly contribute to the findings and conclusions of the independent expert," Dean said.

But those assertions did not satisfy Democrats to the committee, who have insisted that Flanigan's testimony is crucial to an evaluation of the background of the ITT settlement.

Ervin, leaving the meeting to catch an airplane, was furious over the committee's refusal to subpoena Flanigan. He vowed to bring his proposal to a new vote at the first available opportunity.

"If the President wants to make his nominee for Attorney General a sacrificial lamb on the altar of executive privilege, that will be his responsibility and not mine," Ervin said.

"I'm adamantly opposed to either the committee or the Senate taking any action whatsoever on this nomination until the White House aides

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appear and explain their part in these matters," he added.

Byrd, who previously voted with the unanimous committee to recommend Kleindienst's confirmation and who played a minor role in the hearings until last week, echoed Ervin's sentiments.

"Kleindienst is entitled to a verdict," the Democratic whip said. "My verdict might be greatly influenced by the part he (Flanigan) played in the Ramsden report. I would be influenced greatly by his refusal to testify."

Tunney, who insists that he has not yet made up his mind on the Kleindienst nomination, told reporters that "there is no way I can vote for Mr. Kleindienst if Mr. Flanigan does not appear."

Sen. Edward M. Kennedy (D-Mass.) suggested that there was some hope that the committee might change its mind "when the public has a chance to express their indignation" over the refusal to subpoena Flanigan.

There are several options open to senators who consider Flanigan's testimony a prerequisite to Kleindienst's confirmation.

They could exercise their right to talk indefinitely—in effect, filibuster—within the Judiciary Committee. That could frustrate, or at least postponed the committee's commitment to provide some report on the nomination to the Senate floor by April 27.

If defeated in the committee, they could then take their fight to the Senate floor, first opposing any effort even to put Kleindienst's name on the Senate calendar and later filibustering against its approval.

In other action yesterday, the Judiciary Committee decided:

- To hear from Harry Steward, U.S. attorney in San Diego, who was cited for "highly improper" conduct by the Justice Department last year but nonetheless retained in office.
- Not to take testimony from A. David Stutz and Richard Huffman, federal agents who had a dispute with Steward over whether Frank Thornton, a prominent San Diego Republican and political sponsor of Steward, should be required to appear before a federal grand jury there investigating illegal campaign contributions and other matters.
- To have two independent doctors in Denver reexamine Mrs. Beard to see whether her heart condition really prevents her from returning to Washington to testify further before the committee.

The decision for new medical examinations of Mrs. Beard, who collapsed while testifying in her hospital room on March 26, came after Kennedy revealed that her main doctor in Denver, osteopathic physician Louis M. Radetsky, was under investigation for Medicare frauds while he was advising the committee on her condition.

During a public session of the committee yesterday afternoon, attorney Lawrence E. Walsh of New York testified that it was only with difficulty that he persuaded ITT president Harold S. Geneen not to approach President Nixon to complain about the Justice Department's treatment of ITT in the antitrust cases.

Geneen did meet with several administration officials, including then Attorney General John N. Mitchell, for talks on "general antitrust policy" which he insists did not include a review of the pending cases.

Walsh, a former federal judge and deputy attorney general during the Eisenhower administration, said he was retained by ITT last year to help stimulate a "high-level administration review" of its antitrust policy as it applies to such conglomerates as ITT.

But Walsh said that in writing Kleindienst that there was "a high probability" the government would succeed if it pushed the antitrust cases to the Supreme Court, he was only speaking in a general sense.

"What I was trying to impress Mr. Kleindienst with was his prosecutorial responsibility" to seek a review of antitrust policy, Walsh testified.

He acknowledged that he abandoned his approach to the Justice Department after ITT director Felix G. Rohatyn's meetings with Kleindienst appeared to initiate progress toward a settlement.

Walsh also said that when he was deputy attorney general, he "probably would not have" met privately with Rohatyn, as did Kleindienst, without calling in someone from the department's antitrust division.

Also testifying briefly yesterday afternoon was John F. Ryan, deputy director of ITT's Washington office, who initiated the Kleindienst-Rohatyn meetings by approaching Kleindienst at a party in McLean, Va., last spring.

"I guess I sort of did this on my own," Ryan said, insisting he had not been ordered by his superiors to talk with the deputy attorney general. He admitted, however, that he had been "well armed" with ITT's economic arguments concerning the antitrust cases.